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9 **BEFORE THE**
BOARD OF REGISTERED NURSING
10 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

11 In the Matter of the Accusation Against:

12 **LINDA LEE LEWIS**
13 **1813 Trares Road**
14 **Mogadore, OH 44260**
Registered Nurse License No. 547096

15 Respondent.

Case No. **2010-594**
A C C U S A T I O N

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17 Complainant alleges:

18 **PARTIES**

19 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Accusation solely in her
20 official capacity as the Interim Executive Officer of the Board of Registered Nursing, Department
21 of Consumer Affairs.

22 2. On or about August 21, 1998, the Board of Registered Nursing issued Registered
23 Nurse License Number 547096 to Linda Lee Lewis (Respondent). The Registered Nurse License
24 expired on October 31, 2009, and has not been renewed.

25 **JURISDICTION**

26 3. Business and Professions Code ("Code") section 2750 provides, in pertinent part, that
27 the Board may discipline any licensee for any reason provided in Article 3 (commencing with
28 section 2750) of the Nursing Practice Act.

1 4. Code section 2764 provides, in pertinent part, that the expiration of a license shall not
2 deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or
3 to render a decision imposing discipline on the license. Under Code section 2811, subdivision
4 (b), the Board may renew an expired license at any time within eight years after the expiration.

5 5. Code section 2761 states, in pertinent part:

6 The board may take disciplinary action against a certified or licensed
7 nurse or deny an application for a certificate or license for any of the following:

8 (a) Unprofessional conduct, which includes, but is not limited to, the
9 following:

10 (1) Incompetence, or gross negligence in carrying out usual certified or
11 licensed nursing functions.

12 STATUTORY PROVISIONS

13 6. Code section 2762 states, in pertinent part:

14 In addition to other acts constituting unprofessional conduct within the
15 meaning of this chapter [the Nursing Practice Act], it is unprofessional conduct for a
16 person licensed under this chapter to do any of the following:

17 (a) Obtain or possess in violation of law, or prescribe, or except as
18 directed by a licensed physician and surgeon, dentist, or podiatrist administer to
19 himself or herself, or furnish or administer to another, any controlled substance as
20 defined in Division 10 (commencing with Section 11000) of the Health and Safety
21 Code or any dangerous drug or dangerous device as defined in Section 4022.

22 (b) Use any controlled substance as defined in Division 10 (commencing
23 with Section 11000) of the Health and Safety Code, or any dangerous drug or
24 dangerous device as defined in Section 4022, or alcoholic beverages, to an extent or
25 in a manner dangerous or injurious to himself or herself, any other person, or the
26 public or to the extent that such use impairs his or her ability to conduct with safety to
27 the public the practice authorized by his or her license . . .

28 7. Code section 2770.11 states:

 (a) Each registered nurse who requests participation in a diversion
program shall agree to cooperate with the rehabilitation program designed by the
committee and approved by the program manager. Any failure to comply with the
provisions of a rehabilitation program may result in termination of the registered
nurse's participation in a program. The name and license number of a registered
nurse who is terminated for any reason, other than successful completion, shall be
reported to the board's enforcement program.

(b) If the program manager determines that a registered nurse, who is denied admission into the program or terminated from the program, presents a threat to the public or his or her own health and safety, the program manager shall report the name and license number, along with a copy of all diversion records for that registered nurse, to the board's enforcement program. The board may use any of the records it receives under this subdivision in any disciplinary proceeding.

8. Code section 4060 states:

No person shall possess any controlled substance, except that furnished to a person upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified nurse-midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, a physician assistant pursuant to Section 3502.1, a naturopathic doctor pursuant to Section 3640.5, or a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This section shall not apply to the possession of any controlled substance by a manufacturer, wholesaler, pharmacy, pharmacist, physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified nurse-midwife, nurse practitioner, or physician assistant, when in stock in containers correctly labeled with the name and address of the supplier or producer. Nothing in this section authorizes a certified nurse-midwife, a nurse practitioner, a physician assistant, or a naturopathic doctor, to order his or her own stock of dangerous drugs and devices.

9. Code section 4324, subdivision (a), states:

Every person who signs the name of another, or of a fictitious person, or falsely makes, alters, forges, utters, publishes, passes, or attempts to pass, as genuine, any prescription for any drugs is guilty of forgery and upon conviction thereof shall be punished by imprisonment in the state prison, or by imprisonment in the county jail for not more than one year.

10. Health and Safety Code section 11170 states that no person shall prescribe, administer, or furnish a controlled substance for himself.

11. Health and Safety Code section 11173 states, in pertinent part:

(a) No person shall obtain or attempt to obtain controlled substances, or procure or attempt to procure the administration of or prescription for controlled substances, (1) by fraud, deceit, misrepresentation, or subterfuge . . .

COST RECOVERY

12. Code section 125.3 provides, in pertinent part, that the Board may request the administrative law judge to direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

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1 record the administration of this medication to the patient. Accordingly, 1mg of dilaudid in
2 Respondent's possession went missing. There is no documentation that it was wasted.

3 ii. Patient ET: On May 9, 2007, without any physician order for the medication,
4 Respondent used the Acudose-RX cabinet to withdraw 1mg of dilaudid. Respondent did not
5 record the administration of this medication to the patient. Accordingly, 1mg of dilaudid in
6 Respondent's possession went missing. There is no documentation that it was wasted.

7 iii. Patient GG: On May 11, 2007, the physician order called for 1 tab of vicodin at
8 0040 hours. At 0113 hours, Respondent used the Acudose-RX cabinet to withdraw 2 tabs of
9 vicodin. The illegible medication administration record reflected an illegible quantity of vicodin
10 tabs given to the patient at 0100, prior to the actual withdrawal of the medication from the
11 Acusode-RX cabinet. Accordingly, the actual amount of administered or unaccounted for vicodin
12 in Respondent's possession is unknown.

13 iv. Patient CJ: On May 22, 2007, without any physician order for the medication,
14 Respondent used the Acudose-RX cabinet to withdraw 2 tabs of vicodin. Respondent did not
15 record the administration of this medication to the patient. Accordingly, 2 tabs of vicodin in
16 Respondent's possession went missing. There is no documentation that it was wasted.

17 v. Patient BE: On May 22, 2007, without any physician order for the medication,
18 Respondent used the Acudose-RX cabinet to withdraw 1mg of dilaudid. Respondent did not
19 record the administration of this medication to the patient. Accordingly, 1mg of dilaudid in
20 Respondent's possession went missing. There is no documentation that it was wasted.

21 vi. Patient FH: On May 27, 2007, the physician order called for .5 mg dilaudid at
22 1530 hours. Respondent used the Acudose-RX cabinet to withdraw 1mg of dilaudid. Respondent
23 recorded the administration of .5 mg dilaudid at 1920 hours, prior to the actual withdrawal of the
24 medication from the Acusode-RX cabinet. Accordingly, at least .5mg of dilaudid in
25 Respondent's possession went missing. There is no documentation that it was wasted.

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28 password known only to that individual.

vii. Patient CM: On May 27, 2007, the physician order called for 1 mg dilaudid at 2005 hours. Respondent used the Acudose-RX cabinet to withdraw 2 mg of dilaudid. Respondent recorded the administration of 1 mg dilaudid at 2100 hours. Accordingly, 1mg of dilaudid in Respondent's possession went missing. There is no documentation that it was wasted.

viii. Patient CY: On May 27, 2007, the physician order called for 1 mg ativan at 1920 hours. Respondent used the Acudose-RX cabinet to withdraw 2 mg of ativan. Respondent recorded the administration of 1 mg ativan at 2000 hours. Accordingly, 1mg of ativan in Respondent's possession went missing. There is no documentation that it was wasted.

ix. Patient TG: On May 27, 2007, the physician order called for 2 tab of vicodin at 2105 hours. The order was cancelled. At 2127 hours, Respondent used the Acudose-RX cabinet to withdraw 2 tabs of vicodin. Respondent recorded the administration of 2 tabs of vicodin at 2100 hours. Accordingly, the actual amount of administered or unaccounted for vicodin in Respondent's possession is unknown.

Possession of Controlled Substances:

b. Respondent possessed certain quantities of Atavan, Dilaudid, and Vicodin, as set forth in subparagraph (a) above, without a valid prescription from a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor, in violation of Code section 4060.

Prescription of Controlled Substances:

c. Respondent prescribed the controlled substancea, Atavan, Dilaudid, and Vicodin, for herself, as set forth in subparagraph (a) above.

Self-Furnishing of Controlled Substances:

d. Respondent furnished Atavan, Dilaudid, and Vicodin to herself without lawful authority therefor. Respondent was observed to be impaired while on duty toward the end of her employment at the facility. Respondent was not documenting in patient charts and her behavior changed in that she became inconsistent. Other nurses had to oversee Respondent's patient care.

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| Accusation | |
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PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

1. Revoking or suspending Registered Nurse License Number 547096, issued to Linda Lee Lewis;

2. Ordering Linda Lee Lewis to pay the Board of Registered Nursing the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and

3. Taking such other and further action as deemed necessary and proper.

DATED: 5/17/10

Louise R. Bailey
LOUISE R. BAILEY, M.ED., RN
Interim Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant

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